THE SENATE OF CANADA

SPECIAL COMMITTEE ON RIGHTS RE FINANCIAL LEGISLATION.

1918

1st Session, 13th Parliament, 9 George V. 1918.

THE SENATE OF CANADA

REPORT OF THE SPECIAL COMMITTEE

APPOINTED TO DETERMINE

THE RIGHTS OF THE SENATE IN MATTERS OF FINANCIAL LEGISLATION

The Honourable W. B. ROSS, K.C.,
Chairman

OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1945

THE SENATE,

COMMITTEE ROOM No. 70,
THURSDAY, May 9, 1918.

The Special Committee appointed to consider the question of determining what are the rights of the Senate in matters of financial legislation, and whether under the provisions of *The British North America Act, 1867*, it is permissible, and to what extent, or forbidden, for the Senate to amend a Bill embodying financial clauses (Money Bill), have the honour to make their Second Report, as follows:—

Your Committee beg to report that in the latter part of the last Session of Parliament a similar Committee was appointed, but owing to the late date of appointment opportunity was not afforded the Committee for a full consideration of the Order of Reference. During the recess the Honourable W. B. Ross, a member of this Committee, prepared a memorandum dealing with the question, copy hereto attached, which memorandum has been carefully considered and adopted by this Committee. The following summing-up thereof is submitted as the conclusions of your Committee on the rights of the Senate in matters of financial legislation:—

1. That the Senate of Canada has and always had since it was created, the power to amend Bills originating in the Commons appropriating any part of the revenue or imposing a tax by reducing the amounts therein, but has not the right to increase the same without the consent of the Crown.

2. That this power was given as an essential part of the Confederation contract.

3. That the practice of the Imperial Houses of Parliament in respect of Money Bills is no part of the Constitution of the Dominion of Canada.

4. That the Senate in the past has repeatedly amended so-called Money Bills, in some cases without protest from the Commons, while in other cases the Bills were allowed to pass, the Commons protesting or claiming that the Senate could not amend a Money Bill.

5. That Rule 78 of the House of Commons of Canada claiming for that body powers and privileges in connection with Money Bills identical with those of the Imperial House of Commons is unwarranted under the provisions of *The British North America Act, 1867*.

6. That the Senate as shown by *The British North America Act* as well as by the discussion in the Canadian Legislature on the Quebec Resolutions in addition to its general powers and duties is specially empowered to safeguard the rights of the provincial organizations.

7. That besides general legislation, there are questions such as provincial subsidies, public lands in the western provinces and the rights of the provinces in connection with pending railway legislation and the adjustment of the rights of the provinces thereunder likely to arise at any time, and it is important that the powers of the Senate relating thereto be thoroughly understood.

Your Committee are indebted to Messieurs Eugene Lafleur, K.C., Aimé Geoffrion, K.C., and John S. Ewart, K.C., prominent constitutional authorities, of Montreal and Ottawa, who have been good enough to forward their views on the question under consideration by your Committee. These opinions are appended hereto and form part of the Committee's Report.

All which is respectfully submitted.

W. B. ROSS,
Chairman.

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MEMORANDUM

RE RIGHTS OF THE SENATE IN MATTERS OF FINANCIAL LEGISLATION

The Constitution and Powers and Practice of the House of Lords and the House of Commons are so well known that it is unnecessary to refer to them except so far as it is required to explain the Constitution and functions of the Canadian Senate. This enquiry will be limited to the powers of the Senate in respect of "Money Bills"—Bills appropriating any part of the revenue or imposing a tax.

The House of Lords has at present six hundred and odd members and all of these except about seventy owe their position to birth. The Crown has the prerogative to create an unlimited number of new Peerages. This is commonly known as the "Swamping power" and has often been described as the safety valve of the British Constitution. From recent legislation it is quite clear that the House of Commons supported by the Crown can impose any terms on the House of Lords. Till then that House had constitutionally co-ordinate powers with the House of Commons in "Money Bills" as in all Bills and had never formally abandoned them except as to originating money Bills. Todd, Vol. 1, p. 813, says,—Lord Derby in 1861 clearly showed that the Lords had never formally abandoned its rights to amend "Money Bills" and that in the opinion of eminent constitutional authorities they would be warranted in such an act should it be necessary to vindicate their freedom of deliberation and to prevent the enacting of a measure which they regarded as objectionable.

In 1661 the Common asserted "that no Bill ought to begin in the Lords House which lays any charge or tax upon any of the Commons".

In 1671 the Commons affirmed that "in all aids given to the King by the Commons the rate or tax ought not to be altered by the Lords".

In 1678 the Commons Resolved "That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons and that all Bills for the granting of any such aids and supplies ought to begin with the Commons and that it is the undoubted and sole right of the Commons to direct, limit and appoint in such Bills the ends purposes consideration conditions limitations and qualifications of such grants which ought not to be changed or altered by the House of Lords".

The House of Lords protested but this was the practice thereafter. In 1861 the Commons asserted the right to include all financial proposals in the annual Supply Bill and thus not having the power to amend the Lords would have to pass the Bill or reject it as a whole. This was protested against by the Lords but was thereafter the practice. The power of the House of Lords over finance was practically gone from that day. This was the state of the practice concerning finance between the two Imperial Houses when the British North America Act was passed in 1867.

It will be noticed that these powers of the Commons and these disabilities of the Lords are not settled by a law but by practice and custom founded on Resolutions of the Commons backed up by threats to which the Lords yielded under protest. Mr. Asquith's Resolution (1910) "That it is expedient that the House of Lords be disabled by law from rejecting or amending a Money Bill, etc." is an admission of this fact.

Does the practice of the Imperial Parliament as settled in 1867 or as it was asserted to be before the Act just passed limiting the powers of the House of Lords govern the relations of the Senate and House of Commons on "Money Bills"?

Formerly there were many kinds of Colonial Constitutions granted by the Crown but they nearly all ultimately took the form of a Constitution consisting of the Crown a Council appointed by the Crown and an Elective Assembly.

The grant was until a comparatively late date by Letters Patent except in the case of Canada (1791) which was granted by Parliament as it contained provisions that the Crown could not grant by Letters Patent—(See Appendix I in Lord Grey's "The Colonial Government of Lord Russell"). They were all miniatures of the British Constitution.

There is no reasonable doubt that Legislative Councils which are miniatures of the House of Lords are constitutionally bound under penalty of being "swamped" to follow the practice of the House of Lords with regard to money Bills as of the date when the Provincial Constitution was granted. Whether such Councils would be bound to change their practice as the practice of the House of Lords changed has so far as we know never been agitated.

The Constitution of 1791 for the Provinces of Upper and Lower Canada provided for a Legislative Council of a named number for each province reserving to the Crown the right to name as many more as it saw fit. There was also provision for the creation of hereditary Councillors. Nothing was said about the relation of the Houses or money Bills. It is probable that Parliament assumed that the Council would follow the English Parliamentary practice and if it did not it could be "swamped". The Council was an almost perfect miniature of the House of Lords.

The Constitution of 1840 when these two provinces were united was in the main the same. The Legislative Council was to consist of a certain number (20) and power was reserved to add as many more as the Crown saw fit. The provisions in the Constitution of 1791 respecting hereditary Councillors was dropped. The Constitution of 1791 gave representative government. That of 1840 made responsible government possible. Section 57 provided that money Bills should originate in the Assembly but it was also provided that the Assembly should not originate a Bill unless recommended by the Governor.

There are several Constitutions in the Southern Hemisphere of practically the same structure. The Colonial Office said that those Councils should follow the practice of the House of Lords and not amend money Bills but might reject them. The Privy Council also decided against the Legislative Council of Queensland (which was a nominated Council with the "swamping" power) in its claim to amend money Bills.

In New South Wales the Council was to consist of at least twenty-one members but there was no legal limit to the total number. Marriot Second Chambers, p. 156, says,—"There have been various disputes chiefly on fiscal questions between the two Chambers and Parkes definitely asked for a recognition of the principle that Ministers might recommend to the Governor the creation of Councillors". The Crown for the time refused but in 1889 Parkes was more successful in obtaining from Lord Carrington permission to add members to the Legislative Chamber at the convenience and discretion of the Executive. That principle closely akin to one which has long prevailed in the Mother country may now be regarded as securely enshrined among the constitutional conventions of the Colony". At p. 163 he quotes from Wise's Commonwealth of Australia who, it seems, regarded a Government of two Chambers with an Upper House nominated by the Governor as the more workable one, as follows: "This plan gave the Second Chamber something of the influence and attributes of the House of Lords. It was constrained by its own traditions to yield before any manifestations of the popular will and could at any time be coerced by the appointment of new members." Todd Parliamentary Government in the Colonies, p. 821, gives the particulars of a case of "swamping" in New Zealand.

See also Keith Responsible Government in Dominions, p. 569.

It is quite clear that an Upper House in a Colony where the Executive has this "swamping power" is quite as helpless as the House of Lords in financial and in any measures that the Government of the day is determined to carry.

Besides these Councils could be summarily dismissed by the Crown. They had no property in their position merely naked trusts (Despatch of Duke of Newcastle to Governor of Prince Edward Island, February 4th, 1862).

There are Constitutions where the Legislative Council is elective and necessarily the number fixed and no swamping can take place In Tasmania the Council is elective. The number is eighteen. It has persistently claimed and exercised the right to amend money Bills. Keith (Responsible Government in the Dominions), p. 626, says, "that it is useless to contend that the practice of the House of Lords should govern in such a case". He also on the last page of Vol. 1 of his works refers to the action of the Legislative Council of Quebec in throwing out a Supply Bill. He mentions the fact that it was a nominated House without the swamping power and seems by his mention of this to recognize that such a Council is different from those where such power exists.

The next matter of importance to note is that the British Constitution is unitary. The King and Lords and Commons have a jurisdiction one and undivided. Prior to the creation of the Dominion of Canada the Colonies within the scope of their constitutions were unitary. The Governor, Council and Assembly had the whole jurisdiction. The Crown can not create a Dominion and Canada received its constitution from the Imperial Parliament. The Dominion is the Colony and the Provinces are parts of this Colony. The Dominion appoints the Lieutenant Governors of the Provinces who communicate through the Governor General with the Imperial Government.

The Constitution of the Dominion of Canada was therefore new in the line of Colonial Constitutions. The legal effect of the words of the British North America Act will have to be settled (as Acts of Parliament are construed) by the plain meaning of the words used. That Act begins with a recital that the Provinces have expressed a desire to be federally united with a Constitution similar in principle to that of the United Kingdom and this it does by providing that the executive power and authority should continue and be vested in the Queen and that the legislative power should be in a Parliament consisting of the Queen and the two Houses. This is the main principle, but there are many details in working it out. One of these is the Constitution of the Senate of seventy-two members—never to exceed seventy-eight.

The Provinces first of all are divided into three districts, Ontario, Quebec and the Maritime Provinces, each to have twenty-four Senators and in the case of the Maritime Provinces twelve thereof were to "represent" Nova Scotia, and twelve New Brunswick. In the case of Quebec each of the twenty-four Senators is to "represent" one of the twenty-four Electoral Divisions. A Senator is required to be thirty years of age, to be worth four thousand dollars ($4,000.00) and to reside in the Province for which he is appointed, and in Quebec to either reside or hold his property qualification in the Electoral District for which he is appointed. The appointments to the Senate are for life.

There are five things that are new,—age, property, residence, life tenure and the fixed number. In the old Provincial Constitutions these are not found. In those above mentioned (1791) and (1840) a Councillor was required only to be a British subject twenty-one years of age.

The Statute shows a fundamental difference between the Senate and the House of Lords. The Senators are appointed to represent the Provinces. The Members of the House of Commons are elected for constituencies and are summoned under Section 38 of the Act to attend. This puts them on the footing of Members of the English House of Commons and they serve for all Canada. See Blackstone, Book 1, Chapter 2, p. 159, where he says that the Members of the English House of Commons are summoned and that they serve for the whole Kingdom.

Then the Senate is an Upper House in a federation and not in a unitary State or Legislative Union as is the House of Lords. The Senate is not that of the United States or the Upper House in Germany or Switzerland. It is not the first duty of the Senate to protect Provincial interests it is impossible not to infer from the terms of the Act that this is a duty cast upon it. Why else the appointment by Provinces and Electoral Districts with the qualifications of property and residence? Why not an appointment to the Senate simply as in the House of Lords or the nominated Legislative Council already referred to? Such fundamental changes are not made for nothing. The first duty of the Senate is to protect and preserve Provincial rights and interests. No such duty is required of the House of Lords or of any of the Legislative Councils in the Provinces. More than that from the Act it is quite clear that to enable the Senate to do this it was made an independent body by the abolition of the swamping power, and making the tenure of the position for life. It has, of course, other powers and duties consequent on its being an independent part of the Constitution.

The British North America Act imposes one extremely important limitation on the powers of the Senate. Sections 53 and 54 of the Act reads:—

"(53) Bills for appropriating any part of the Public Revenue or for imposing any tax or impost shall originate in the House of Commons.

"(54) It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address or Bill for the appropriation of any part of the public revenue or of any tax or impost to any purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address or Bill is proposed."

It is worth noting that this last Section simply embodies the practice of the Imperial House of Commons. That House may reduce; it can not of itself increase the sum recommended by the Ministry. (See Todd's Parliamentary Government, Vol. 1, p. 702 and cases in notes thereto.) See also Keith, p. 568.

It is quite clear that if the House of Commons in Canada increased an amount recommended, the increase would be illegal unless a further recommendation should be had.

Section 53 embodies the only point on finance ever conceded to the House of Commons by the House of Lords. (See Todd, Vol. 1, p. 811.) When the House of Commons passes an appropriation or tax Bill it must be either for the sum recommended or for some smaller sum. When the Bill is for a smaller sum and the Ministry of the day continues to hold office it must be assumed that the Crown has assented to the reduction. (See Todd, Vol. 2, p. 391.) When such a Bill goes to the Senate the amount mentioned in the Bill is therefore the sum recommended by the Crown. The Senate could not increase this sum without coming in conflict with the prerogative of the Crown to say what money is wanted. (Todd, Vol. 1, p. 689.) The foundation of all Parliamentay taxation is the necessity for the public service as declared by the Crown through its constitutional advisers. The Senate therefore cannot directly or indirectly originate one cent of expenditure of public funds or impose a cent of taxation on the people. This is involved in Sections 53 and 54 and the Clauses of the Act defining the executive power. This is, however, the only limitation of the powers of the Senate in regard to "Money Bills" in the British North America Act. In all other respects the Act leaves with it co-ordinate powers with the House of Commons to amend or reject such Bills.

One objection urged against this statement is that the Senate is bound to follow the practice of the House of Lords and not amend a Money Bill. There is nothing in the British North America Act which says this. The preamble says: "With a Constitution similar in principle to that of the United Kingdom"

and therefore it is said the Senate is bound by the practices of the House of Lords. Resolutions practice and disuse go to form the constitution of the United Kingdom. The Canadian Constiution can only be changed by the Imperial Parliament, and no resolution or practice can alter a word in it.

Principles and practices or customs are very different things. On principle the House of Lords is co-ordinate with the House of Commons, and the Senate of Canada is co-ordinate with the House of Commons, except in this one matter of originating Money Bills. The House of Commons in England, by its use of the "Swamping power" has reduced the House of Lords to a state of impotence in all financial matters. The House of Commons in Canada has no such power. A law without a sanction is nothing. A practice or custom or convention without the power to enforce it is nothing even if the practice were applicable.

The Constitution of the Senate as already outlined is fundamentally different from the House of Lords and its functions of safeguarding Provincial interests in a federal system is one unknown to an Upper House in a unitary system as is the House of Lords. Then the Senate is in a measure representative although nominated. This is brought about by the property and residence qualifications of Senators.

The division of the Dominion into Senatorial Districts differentiates the two Upper Houses. The Senators first of all represent their Provinces or Districts and their first duty is to them. Then the "swamping power" was taken away for the express purpose of making the Senate independent of the House of Commons as a condition precedent to Confederation. On what implication or analogy can a practice forced on the House of Lords by an all-powerful House of Commons be applicable to an independent House like the Senate? It would require a Statute to effect this like Sections 53 and 54.

Again why did the Imperial Parliament when passing the British North America Act insert as Section 53 only a part of the Resolution of 1678 knowing that the power of imposing the practice of the House of Lords by the swamping power was gone? The contention that it expressed part of the 1678 Resolution and left the other part to be implied or settled by a practice of the House of Lords is not a reasonable one. The fact is that it was the Resolution of 1661 that was so inserted.

It is evident that the Canadian Senate, subject to the limitations of Sections 53 and 54 of the British North America Act, is an independent body with co-ordinate powers with the House of Commons and entitled to make its own Rules and Practice.

The contention that the word "originate" in Section 53 excludes the change of a word or figure by the Senate is altogether inconsistent with the ordinary meaning of the word and with the whole history of its use in Imperial Parliamentary Practice and in the Provincial Constitutions with elected Councils and in European Constitutions with similar clauses to 53. We have seen that "nominated" Councils with the swamping power were held to the practice of the House of Lords but those with elected Councils were not, but both had clauses corresponding with our Sections 53 and 54. It is a principle that a limitation goes as far as it says and no farther. Section 53 is a limitation of the powers of the Senate and does not go beyond what it necessarily includes,—what this is has already been dealt with.

When the House of Commons of Canada claims that it can drag the Senate beneath it as the Commons did the House of Lords in England and through the "swamping power" the answer is that it has not got this power and is as much bound by the British North America Act as the Senate. We have a Constitution that can only be altered by the Imperial Parliament. The House of Commons can not by passing Rules add to its powers or diminish those of the Senate. Rule 78 of the House of Commons is quite outside of the powers of that House.

If the Senate has not the power to amend Money Bills it has no practical power to see fair play to the Provinces in finance or to protect an interest unfairly used financially. If it threw out a Money Bill under the practice in England, as of 1860, the Commons could the next Session tack a new Bill in the same words to the Supply Bill and say you can not amend, pass, or reject the whole Bill. To reject a supply Bill might in olden times have been feasible but to-day with the functions of Government so vast and complicated it is unthinkable. There would be no pay for the Army, Navy, Civil Service, Judges, Government, Railway men or money to pay any public charge. It would mean chaos. A Supply Bill should be passed as a matter of course by the Senate in almost any conceivable circumstances if it contains nothing but Supply. If other matters are inserted in the Bill or "tacked to it" these should be struck out and be made into a separate Bill or Bills.

Subjoined are a few references to the debates on the Quebec Resolutions in the Canadian Parliament, and also a few references to works on the Constitution of Colonial Governments for conveniences so that those interested may have access to those which are found in the Parliamentary Library.

In the Parliamentary Debates 3rd Session Provincial Parliament of Canada on the subject of the Confederation of the British North American Provinces at page 21, Mr. Campbell gave the reasons for the Conference determining as they had on the Constitution of the Upper House and says, "And the main reason was to give each of the Provinces adequate security for the protection of its local interests, a protection which it was feared might not be found in a House where the representation was based on numbers only as would be the case in the General Assembly. The number of representatives to the Legislative Council under the Federal Constitution would be limited and they would be appointed for life instead of elected by the people." "For the purpose of securing equality in that House the Confederation would be divided." He then explains why the Senate was not elective. Upper Canada was growing fast and an agitation might arise there for greater representation. "They (Ontario) might object to the fishing Bounties paid the Lower Provinces to the money expended there in fortifications or to something else and claim a representation in the Council more in accordance with their population to enforce their views; and in view of such contingencies the delegates from those Provinces conceived it would not be safe to trust their rights to an elective House." At page 22, col. 1 referring to the Constitution of the United States he says,—"In this way the smallest State like Rhode Island was as fully represented as the State of New York and if that was considerd necessary in a country so compact together as the United States how much more would it not be proper in a Confederation some of the sections of which were separate from each other by long narrow strips of land or wide estuaries with small representation in the popular branch and looking chiefly to their equality in the Upper Chamber for security for local rights and interests and institutions."

Sir John Macdonald says at page 29, Vol 1, "We were forced to devise a system of union in which the separate Provincial organizations would be in some degree preserved." At page 35 he says,—"We resolved then that the Constitution of the Upper House should be in accordance with the British system as nearly as circumstances would allow." At page 36 he says, "The provision in the Constitution that the Legislative Council shall consist of a limited number of members—that each of the great sections shall appoint twenty-four and no more will prevent swamping. The fact of the Government being prevented from exceeding a certain number will preserve the independence of the Upper House, etc." At page 38, col. 1, speaking of the limitation of the number of Senators, Sir John said, "To the Upper House is to be confided the protection of sectional interests: therefore it is that the three great divisions are there equally repre-

sented for the purpose of defending such interests against majorities in the Assembly" and further on he says, "For the same reason each State of the American Union sends its two best men to represent it in the Senate." On page 42 he says, "We provide there shall be no money votes unless these votes are introduced in the popular branch of the Legislature." At page 35, top of column 1, Sir John refers to the Powers and Privileges of the Commons. It should be noted that Section 18 of the British North America Act had to be enacted to give the Canadian Houses the Powers and Privileges of the Imperial Houses as there was no provision of this kind in the Quebec Resolutions. The Privy Council has decided that this section does not include legislative power (Keith, p. 558). At page 89, Mr. George Brown says,—"But Honourable Gentlemen must see that the limitations of the numbers in the Upper House lies at the base of the whole compact on which this scheme rests." He went on to say that power to increase the number would sweep away the whole protection they had from the Lower House. He shows further that the Senate though nominated is representative. At page 92 he refers to the fact that the Lower House would have control of the purse—Ontario, he says, had seventeen more members than Quebec and the people of Ontario could get fair play. At page 90 he says, "But it is objected that in the Constitution of the Upper House so far as Lower Canada is concerned the existing electoral divisions are to be maintained, while as regards Upper Canada they are to abolished—that the Members from Lower Canada are to sit as representing the divisions in which they reside or have their property qualifications, while in Upper Canada there is no such arrangements. Undoubtedly this is the fact; it has been so arranged to suit the peculiar position of this section of the province. Our Lower Canadian friends felt that they had French Canadian interests and British interests to be protected and they conceived that the existing system of electoral divisions would give protection to these interests." At page 89 Mr. Brown says, "But if it is said that if the members are to be appointed for life the number should be unlimited—that in the event of a deadlock arising between the Chamber and this there should be power to overcome the difficulty by the appointment of more members. Well, under the British system in the case of a legislative union that might be a legitimate provision." At page 88, col. 1, he says, speaking of the loss of influence to Ontario, "Hitherto we have been paying a vast proportion of the taxes with little or no control over the expenditure. But under this plan by our just influence in the Lower Chamber we shall hold the purse strings." At page 92, he says, "We are to have seventeen additional members in the House that holds the purse." At page 90, he says, "The desire was to render the Upper House a thoroughly independent body—one that would be in the best position to canvass dispassionately the measures of this House and stand up for the public interests in opposition to hasty or partisan legislation." Mr. Dorion at page 254, at the foot of col. 2, points out that the effect of abolishing the swamping power was to make the Senate entirely independent.

"The Federal Upper Chamber guards in fact the principle of state rights against the numerical majority and the will of the people and its function may therefore be and frequently is the exact opposite of that of an Upper Chamber in a unitary state. In regard to finance this is especially the case. In a federation the smaller states always wish to be protected against the larger ones exploiting the Federal finances to their own profit; hence the Upper Chamber possesses powers of financial control that may fairly be called extraordinary in almost all Federal States." (Temperley, Senates and Upper Chambers, p. 15).

"The United States comprise forty-five independent states, some as small as Cambridgeshire, others as large or larger than Yorkshire or Wales yet each state has two representatives and two only in the Federal Senate. The reason is obvious. The stipulation which each petty state made when it entered the union was that its interests and rights should not be at the mercy of a numerical

majority in the Federal Lower House elected on universal suffrage and therefore largely representing the bigger and more populous states." (Temperley, Senates and Upper Chambers, p. 15.) For the composition of Upper Chambers in the Colonies, see Temperley, p. 48. For the swamping of the Upper Chamber in the Colonies, see Temperley, p. 269, App. 6.

" The Federal state is the most complex and ingenious of modern political communities and its Upper Chamber usually exhibits one aspect of that ingenuity. One principle is, however, common in all such formations. The federation is based on a union of individuals, and of states, and that union is expressed in the constitution of the two Chambers. The lower one represents the rights and powers of the people—the total numerical majority. The Upper Chamber represents the rights and powers of the states in their separate and individual capacity. Population has always full representation in the Lower Chamber."

"In the unitary state the Upper Chamber only represents the rights of property or individuals or of the classes. In this respect then a Federal Senate always has an advantage which no Upper Chamber in a unitary state (as for example the House of Lords in England) can ever claim to possess and it is this fact which lessens the possibilities of comparison and renders many apparent analogies totally misleading." (Temperley, p. 209.)

At page 224 Temperley says, " In theory the Senate of Canada possesses equal rights with those of the Lower House except that it can not originate money bills. It has, however, the full power either to amend or reject them."

Speaking of the Australian Senate, Marriott at page 168 says: " But like the American Senate, it accords to each state equal representation—a principle not asserted without strong and intelligible protests from the larger States. To the smaller States on the other hand, this principle was the condition precedent, the ' sheet anchor ' of their rights and liberties. And, once asserted, it is fundamental and (except in unimaginable conditions) unalterable."

In a Return to an Address relating to the Constitution of Second Chambers, of the Honourable The House of Commons (Imperial), dated March 3, 1910, page 3, paragraph 2, the following appears:—

" 2. It is provided by section 53 of the British North America Act that ' Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons.' There is no other provision limiting the power of the Senate with regard either to finance or to general legislation."

The South Australian Constitution contains a clause corresponding with our section 53 and Keith says of this at page 626 of volume 2.

" In fiancial matters as the Constitution had carefully left the matter totally undetermined beyond providing for the origination of such Bills in the Lower House it was only found possible to work at all by an informal agreement between the two Houses."

Keith in volume 1, page 567, says:

" In 1909 and 1910 minor questions had arisen in the case of New Zealand as to the position of the Council. In the former year the Council inserted an appropriation clause in a Reformatories Bill, which was validated *ex post facto* by a Governors message being obtained to cover it, and the Speaker decided that that procedure was adequate for the occasion. In 1910 the Upper House altered the Crimes Amendment Bill by inserting an appropriation clause, and there was rather a warm discussion, the Speaker ruling that either a Governor's message must be obtained and the House formally by resolve decide not to insist on its privileges, or the Bill must be laid aside. The former course was adopted after a lively debate."

MONTREAL, April 30, 1918.

The Honourable W. B. Ross,

The Senate, Ottawa, Ont.

DEAR SIR,—We have been asked if in our opinion the Senate has the power to amend Money Bills.

Sections 17 and 91 of the British North America Act place the Senate on exactly the same footing as the House of Commons as respects all legislation.

The only material derogation to this general rule is contained in section 53 which provides that Bills for appropriating any part of the public revenue or for imposing any tax or impost shall originate in the House of Commons.

The denial of the right to originate Money Bills does not involve the denial of the right to amend them. Nothing therefore in the text of the British North America Act takes away the latter right from the Senate.

The first paragraph of the preamble where it is stated that the provinces desire to be united federally with a constitution *similar in principle* to that of the United Kingdom is relied on.

These words being in the preamble have much less importance than if they were in the text. Further it is obvious that similarity in principle does not mean identity in detail; the Canadian constitution differs from the British constitution in many and important respects; the similarity in principle referred to in the preamble is intended to exist only to the extent stated in the text.

The third paragraph of the preamble states that it is expedient not only that the constitution of the Legislative authority in the Dominion be provided for but also that the nature of the Executive Government therein be declared, and the text of the Act contains many sections which merely restate rules of the British constitution such as section 53 already referred to.

If the above-mentioned words of the preamble meant that the British constitution applies to Canada except in so far as the text of the Act expressly derogates therefrom the third paragraph of the preamble and all those sections particularly section 53, would be useless or meaningless.

The consideration of how the rule limiting the powers of the House of Lords in the United Kingdom came to be adopted affords an additional argument in support of the view suggested by the text of the British North America Act.

In the early days there was a conflict between the British House of Commons and the House of Lords on this question of the powers of the House of Lords in respect of Money Bills.

In 1678 the Commons resolved:

> "That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons and that all Bills for the granting of any such aids and supplies ought to begin with the Commons and that it is the undoubted and sole right of the Commons to direct, limit and appoint in such Bills the ends, purposes, considerations, conditions, limitations and qualifications of such grants which ought not to be changed or altered by the House of Lords."

In 1693 the Lords resolved:

"That the making of amendments and abatements of rates of Bills of Supply sent up from the House of Commons is a fundamental, inherent and undoubted right of the House of Peers from which their Lordships can never depart."

It is true that the Lords did not act in accordance with this resolution and tacitly submitted to the claim of the Commons, obviously to avoid a conflict with the latter House, but this practice was not the law, and this appears from the preamble of the House of Commons resolution of 1910 which announced the proposed legislation curtailing the powers of the Lords. (May's Parliamentary Practice, 12th edition, p. 518.)

It is remarkable that of the two restrictions on the rights of the Lords which the Commons by its resolution of 1678 tried to impose, namely: the denial of the right to originate and the denial of the right to amend Money Bills, the British North America Act while mentioning the first in section 53 should not mention the second against which the Lords had specially protested.

If it had been the intention of the British Parliament to impose the two restrictions on the Senate it surely would have mentioned them both or if content to rely on the preamble as incorporating the whole British constitution, it would have mentioned neither.

To those reasons might be added this further consideration that there is very little analogy between the Lords and the Senate. The Lords represent themselves, the Senate represents the Provinces. The Lords are not in an independent position as the House of Commons can use its influence over the Crown and induce it to add as many members as are needed to the House of Lords to obtain a favourable majority.

It is probably for that reason that section 18 of the British North America Act when dealing with the privileges, immunities and powers of the Senate refers as the maximum for such privileges, immunities and powers to those held, enjoyed and exercised by the Imperial House of Commons (and not by the House of Lords) at the passing of the Act.

Under the circumstances, we are of the opinion that the Senate of Canada may amend a Money Bill originating in the House of Commons as fully as the House of Commons can do. Of course the powers of the Senate are limited to the same extent as those of the House of Commons by the fact that Money Bills must be recommended by a message of the Governor General.

Yours truly,

(Sgd.) E. LAFLEUR
AIME GEOFFRION

400 Wilbrod Street,

Ottawa, 27th April 1918.

The Hon. Senator W. B. Ross,

The Senate, Ottawa.

Dear Sir,—In reply to yours of the 23rd instant, I beg to say that I have read with much interest the "Memorandum *re* rights of the Senate in matters of financial legislation," and I find in it a great deal that, were the matter now being discussed for the first time, might well be urged in support of what is evidently the writer's view.

In considering all subjects of the class to which the present belongs, regard has always—and very rightly—been paid to history and precedents; and the relations between our Senate and House of Commons are, as I think, so firmly established that no change could be introduced save by constitutional amendment. I do not mean, necessarily, by amendment of the British North America Act—amendment of constitutional practice, agreed upon by both Houses, would suffice.

From the very earliest time, the Colonial Assemblies have successfully contended for the same privilege with reference to financial bills as that enjoyed by the British House of Commons. The cases in which contention arose are very numerous, but I do not know of any in which the quarrel between the two Houses has resulted in substantial victory for the Council—as, in the earlier constitutions, the second chamber was styled.

A glance at the histories, furnishes me with two instances which may be taken as containing typical assertion of the privilege of the Assemblies. The first of these is noted in *Dickerson's American Colonial Government, 1696-1765:* The author says (p. 160) that, in the time of Governor Cornbury of New York:—

> "The Council sought to amend the revenue bill so as to remove this objection, but it was met by the point blank assertion that the assembly would permit no amendment of Money Bills."

The second instance I take from Dr. Kingsford's book, the *History of Canada,* volume 9, p. 217. On that occasion (1818) the Council and Assembly were brought into sharp conflict, with the result, as the author says, that:—

> "The Council did not conceive an amendment to the money bill as a breach of privilege; but as it was so asserted, the Council would hereafter forbear from all amendment, and simply reject any bill submitted to it, should occasion suggest."

There can be no doubt that the difference between the British House of Lords and the Canadian Senate referred to in the Memorandum are of substantial character, but, after all, the two Houses, with reference to the subject under consideration occupy the same position. For the members of neither House are elected by the people, and the privilege of the Assembly with regard to money bills has always been based upon the fact that the House was composed of popularly elected members.

In the United States, it is because both the Senate and the House of Representatives have always been composed of men elected by the people —either by direct vote or, indirectly, by the State Legislature—that the two Houses have concurrent authority.

I am, Sir,

Yours truly,

(Sgd.) JOHN S. EWART.